

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005

TOLLING ORDER

February 28, 2003

FORMAL CASE NO. 962, IN THE MATTER OF THE IMPLEMENTATION OF
THE DISTRICT OF COLUMBIA TELECOMMUNICATIONS COMPETITION
ACT OF 1996 AND IMPLEMENTATION OF THE TELECOMMUNICATIONS
ACT OF 1996, Order No. 12666

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") hereby tolls the 30-day statutory deadline for issuing a decision on Verizon Washington, DC Inc.'s ("Verizon DC") Application for Partial Reconsideration and Clarification of Order No. 12610 ("Verizon DC Reconsideration");¹ AT&T Communications of Washington, D.C. L.L.C.'s ("AT&T") Application for Partial Reconsideration ("AT&T Reconsideration");² and the Application for Reconsideration ("OPC Reconsideration") of the Office of People's Counsel ("OPC").³ Therefore, the Commission's Order on the parties' Applications for Reconsideration is due on April 3, 2003.

II. BACKGROUND

2. On December 6, 2002, the Commission issued Order No. 12610 ("UNE Order"), which established the resale discount rate, the cost of capital and depreciation rates, and unbundled network element ("UNE") rates in the District of Columbia.⁴ On

¹ Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Verizon Washington, DC Inc.'s Application for Partial Reconsideration and Clarification of Order No. 12610 ("Verizon DC Reconsideration"), filed January 3, 2003.

² Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, AT&T Communications of Washington, D.C. L.L.C.'s Application for Partial Reconsideration ("AT&T Reconsideration"), filed January 6, 2003.

³ Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Application for Reconsideration of the Office of the People's Counsel ("OPC Reconsideration"), filed January 6, 2003.

⁴ Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12610, rel. December 6, 2002.

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January 3, 2003, Verizon DC filed an Application for Partial Reconsideration and Clarification of Commission Order No. 12610.⁵ As indicated by Verizon DC, the UNE Order rates do not allow Verizon DC to recover its actual or forward-looking costs.⁶ Verizon DC contends the Commission's UNE Order produces confiscatory rates that violate the Fifth Amendment of the United States Constitution.⁷ Consequently, Verizon DC asserts the UNE Order must be reconsidered.⁸

3. On January 6, 2003, AT&T filed an Application for Partial Reconsideration of Commission Order No. 12610.⁹ AT&T states that the Commission's UNE Order provides a "good first step toward the development of telecommunications competition" in the District.¹⁰ Yet, AT&T asserts there are several key areas that the Commission must reconsider because these rates do not comport with TELRIC.

4. OPC also filed an Application for Reconsideration on January 6, 2003.¹¹ In support of its Application for Reconsideration, OPC argues the record supports a modification of the Commission's decision in two distinct areas. Specifically, OPC avers that the Commission should allocate the cost of the loop equally between voice and data service providers during linesharing and that the Commission should reject Verizon DC's resale discount cost study as flawed.¹²

5. On January 10, 2003, AT&T filed a Motion for Enlargement of Time to respond to Verizon DC's Reconsideration.¹³ In support of its motion, AT&T asserted that Verizon DC's Reconsideration was lengthy and challenged virtually all of the Commission's UNE rates.¹⁴ AT&T also claimed that the number of issues raised by

⁵ Verizon DC Reconsideration at 1.

⁶ *Id.*

⁷ *Id.* at 9.

⁸ *Id.* at 5.

⁹ AT&T Reconsideration at 1.

¹⁰ *Id.*

¹¹ OPC Reconsideration at 1.

¹² *Id.* at 2.

¹³ *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Motion of AT&T Communications of Washington, D.C. L.L.C. for Enlargement of Time ("AT&T Motion"), filed January 10, 2003.

¹⁴ AT&T Motion at 1.

Verizon DC required a more comprehensive response than is allowed by the normal response deadline.¹⁵

6. On January 24, 2003, the Commission issued Order No. 12642, which tolled the 30-day statutory deadline for issuing a decision on Verizon DC's Reconsideration, AT&T's Reconsideration; and OPC's Reconsideration.¹⁶ In addition to tolling the 30-day statutory deadline, the Commission granted the Motion of AT&T for Enlargement of Time to file a response to Verizon DC's Reconsideration.

III. DISCUSSION

7. Section 34-604(b) of the District of Columbia Code and Section 140.1 of the Commission Rules of Practice and Procedure require that the Commission render a decision on reconsideration's within 30 days.¹⁷ The District of Columbia Court of Appeals, however, held that for reasoned and deliberate consideration of applications for reconsideration the Commission may extend the statutory period.¹⁸ Due to the complexity of the issues raised by the three parties, the Commission needs additional time to consider the three Applications for Reconsideration pending before us. For the above reason, the Commission hereby determines that more time is necessary before rendering a full and complete ruling on the parties' reconsiderations.

THEREFORE, IT IS ORDERED THAT:

8. The 30-day statutory deadline for issuing a decision on Verizon Washington, DC Inc.'s Application for Partial Reconsideration and Clarification of Order No. 12610 is **TOLLED**;

9. The 30-day statutory deadline for issuing a decision on AT&T Communications of Washington, D.C. L.L.C.'s Application for Partial Reconsideration is **TOLLED**;

10. The 30-day statutory deadline for issuing a decision on the Application for Reconsideration of the Office of People's Counsel is **TOLLED**;

¹⁵ *Id.* at 2.

¹⁶ *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12642, rel. January 24, 2003.

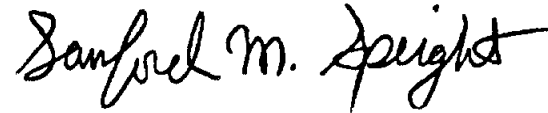
¹⁷ D.C. CODE § 34-604(b) (2001 Ed.) and 15 DCMR § 140.1

¹⁸ *See United States v. Public Service Commission*, 465 A.2d 829 (D.C. 1983).

11. The date by which the Commission will issue a decision on the three Applications for Reconsideration is **EXTENDED** to April 3, 2003.

A TRUE COPY

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Sanford M. Speight". The signature is written in a cursive, flowing style.

CHIEF CLERK

SANFORD M. SPEIGHT
ACTING COMMISSION SECRETARY